

The Council of the Lexington-Fayette Urban County Government, Kentucky convened in special session on September 20, 2005 at 1:30 P.M. Present were Mayor Teresa Ann Isaac in the chair presiding, and the following members of the Council: Council Members Brown, Cegelka, DeCamp, Ellinger, Farmer, Gorton, Lane, McChord, Moloney, Scanlon, Shafer, Stevens, Stinnett and Wigginton (Mr. Wigginton was present for the meeting but stated that he did not vote because he was absent for the September 13, 2005 meeting when the zone change request was first considered). Absent was Council Members Myers.

Mr. Richard Murphy, attorney for the petitioner, Nuti Builders, Inc., stated that they have agreed to a set of conditional zoning restrictions that he summarized.

Mr. _____, _____, stated that they do not want the ordinance remanded back to the Planning Commission.

An Ordinance remanding the proposed zone change for property at 1097 Duval Street to the Planning Commission based on the major changes to the application made at the Council Hearing on September 8, 2005, for further Planning Commission proceedings based on the amended application was given second reading and failed to pass by the following vote:

Aye: _____ 0

Nay: Brown, Cegelka, DeCamp, Ellinger, Farmer, Lane, McChord,
Moloney, Scanlon, Shaer, Stevens, Stinnett ----- 12
(Ms. Gorton disqualified herself when the vote was taken.)

Mr. Lane made a motion, seconded by Mr. Farmer, to approve the following Findings of Fact for Approval and Conditional Zoning Restrictions from the Petitioner:

Based upon the evidence presented to us, this Council hereby approves
MAR 2005-25: Nuti Builders, Inc. for the following reasons:

There have been changes of an economic, physical or social nature on the subject property and within the area in which the subject property is located which were not anticipated at the time the binding restriction or conditions were imposed in 1996, which have substantially altered the basic character of this area making the restrictions inappropriate and improper. These changes are as follows:

1. In 2000, a zone change was granted for property immediately to the south of this property, across Duval Street, rezoning that property P-1, without use restrictions. The uses proposed by the applicant for the subject property are also P-1 types uses. In 2000, the Planning Commission and the Urban County Council found that there is an under-supply of office space in this area of the Bates Creek Road corridor, and no property outside Man-O-War Boulevard is zoned or proposed for professional service uses. Also, the Planning Commission and the Council found that rezoning that tract would not have a major impact on traffic in the area nor would it adversely affect the aesthetics of the Bates Creek Road corridor or alter the character of the existing uses in the immediate vicinity. The rezoning of that parcel did not contain restrictions such as those placed on this parcel in 1996.
2. In 2001, the land use map of the Comprehensive Plan was amended to show the subject property as retail trade, instead of high density residential, the previous classification. All the uses proposed in the current application agree with the retail trade designation in the Comprehensive Plan. Thus, this proposal is in agreement with the current Comprehensive Plan.
3. In 2001, the goals and objectives of the Comprehensive Plan were amended. These goals and objectives indicate that this proposal meets not only the land use plan element of the Comprehensive Plan, but the goals and objectives. Those goals and objectives are as follows:
 - a. Encourage new development to compact and contiguous. Goal 7, Objective E.
 - b. Assure that development maximizes efficient use of existing adequate essential facilities or occurs only where essential facilities are planned and programmed to reasonably coincide with the occurrence of development. Goal 7, Objective J.
 - c. Plan for and promote infill and redevelopment that is appropriate in character, density and design and serves to re-enforce the fabric of the neighborhood. Goal 14, Objective E.
 - d. Encourage innovative design, planning and development solutions that are consistent with neighborhood needs and character. Goal 14, Objective H.
 - e. Promote human-scale, bicycle and pedestrian-friendly neighborhoods. Goal 14, Objective K.
 - f. Promote well-designed new development, creating and enhancing neighborhoods and communities. Goal 15.

Amended Conditional Zoning Restrictions:

- A. The B-1 site shall be used only as either a sit-down restaurant without drive-through facilities or the service of "fast food", a florist shop and/or a use permitted in the P-1 zone other than a bank, a credit institution, a television studio or hospital;
- B. The existing structure shall be preserved except to the extent it must be modified to permit the construction of additions and/or renovations as described below;

- C. Additions to the existing structure shall be allowed, but shall only be in accordance with a final development plan submitted to and approved by the Planning Commission, and such additions in total shall not exceed 3,000 square feet and shall be governed by all of the restrictions and limitations that apply to the new building as described below;
- D. Parking will be in accordance with a final development plan submitted to and approved by the Planning Commission;
- E. The property owner shall preserve the existing mature trees on-site except as necessary for the construction of one new building, additions to the existing structure and accessory parking, all as approved by the Planning Commission on the final development plan for the site and subject to all restrictions and limitations contained herein, and such trees, if removed, shall be replaced in equal number to preserve the buffer between the site and Bates Creek Road;
- F. Signage shall be limited to the signage shown on and approved by the Planning Commission on the final development plan for the site and in accordance with the limitations contained herein;
- G. Existing trees which provide a visual buffer from surrounding properties shall be preserved. Damaged or diseased trees may be removed if also replaced in equal number and kind on the site; and
- H. The construction of one new building shall be permitted; however, such building shall not exceed 36,000 square feet, shall not exceed 36 feet in height at its highest point as measured from the existing grade level, including all fixtures, equipment and any other materials (except that any equipment located on the roof shall be completely screen from view by parapet walls which are permitted to rise an additional 6 feet solely for that purpose), shall primarily utilized only a brick façade which must cover no less than 55% of the exterior surface of the building excluding the roof, windows and doors, and the roof shall vary in height with no less than three (3) articulating roof heights. In addition, such building shall be no closer at any point than 30 feet from the right-of-way bordering Bates Creek Road.

The motion passed by the following vote:

Aye: Brown, Cegelka, DeCamp, Ellinger, Farmer, Lane, McChord, Moloney, Scanlon, Shaer, Stevens, Stinnett ----- 12

Nay: ----- 0

(Ms. Gorton disqualified herself when the vote was taken.)

An Ordinance changing the zone from a Neighborhood Business (B-1) zone with conditional zoning restrictions to a Neighborhood Business (B-1) zone with modified conditional zoning restrictions for 4.19 net (5.83 gross) acres of property located at 1097 Duval Street (Nutti Builders, Inc.) was on the docket to be considered and voted on.

Mr. Lane made a motion, seconded by Mr. Farmer and passed by unanimous vote, to amend the ordinance to include the conditional zoning restrictions.

An Ordinance _____ (**PUT IN THE NEW HEADING, IF DIFFERENT**) was given first reading as amended.

Upon motion of Mr. Farmer and seconded by Ms. Shafer, the rules were suspended by unanimous vote (. The ordinance was given second reading and passed by the following vote:

Aye: Brown, Cegelka, DeCamp, Ellinger, Farmer, Lane, McChord,
Moloney, Scanlon, Shaer, Stevens, Stinnett ----- 12

Nay: ----- 0
(Ms. Gorton disqualified herself when the vote was taken.)

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The Council adjourned at 1:44 p.m.

Clerk of the Urban County Council